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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,820	07/23/2003	Jonathan Maynes	CEN0017-01	7804

7590  
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02/05/2008

EXAMINER
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PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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02/05/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/625,820

**Applicant(s)**

MAYNES, JONATHAN

**Examiner**

Carolyn A. Paden

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,8,10-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_  
is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,10-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda (5,833,858) as further evidenced by Merck Index for reasons of record.

Applicant argues that the evidence shown in Table 2 is related to the starting material. But the claims are directed to a product. The fact that Table 2 shows starting ingredients does not render the product unobvious. Applicant argues that Material 1 has too much fat in it. This has been considered but is not persuasive because Material 2 in Table 2 has the claimed fat content. Applicant has amended the claims to set forth a sugar content but the composition of material 2 in Table 2 is substantially phospholipid and would not be expected to contain sugar.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Umeda as further evidenced by Merck Index as applied to claims 1 and 2 above, and further in view of Losch for reasons of record.

Applicants' arguments are related to the rejection of claims 1 and 2 so no additional arguments need to be addressed for this rejection.

Claims 8, 10-18, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss (4,357,353) in view of Merck Index.

Upon review of the file while updating the search on the method claims, the Strauss reference was discovered. Allowance of these claims has been withdrawn in order for applicant to respond to the following new rejection. Strauss discloses preparing an emulsifier by solvent extraction of lecithin. In Example 1, 8% egg lecithin is dissolved in 37.2% ethanol and 54.4% water. The ratio of ethanol to water in the extracting solution appears to be within the range of the claims. Then a precipitate occurs. The precipitate is centrifuged. The precipitate is recovered and dried to form a product with a phosphatidylcholine content of 74%. The claims appear to differ from Strauss in the recitation of a second solvent extraction step and in the recitation of the composition of the product made. Although Strauss only uses one extraction step in his process, it is well known in the art to utilize multiple extraction steps to improve the quality of the products formed during processing. It is appreciated that the composition of the lecithin product is not the same but this if a product limitation, carrying no

weight in the process claim. Further Strauss shows a variation in the flocculation rates of lecithin when different ratios of ethanol are used and when lecithin sources are treated. It is also appreciated that the acetone insolubles content of the composition is not mentioned but this value is a well known property of lecithin, as evidenced by the Merck Index. The fat content of the product is disclosed to be less than 2% (column 4, line 30. It would have been obvious to one of ordinary skill in the art to use the extraction process of Strauss to create an improved lecithin product. It is appreciated that the sugar content of the lecithin is not mentioned but this components would be extracted during the ethanol and water treatment of Strauss.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strauss as applied to claims 8, 10-18, 21 and 22 above, and further in view of Losch.

The claims appear to differ from Strauss in the formulation of lecithin into granulated form. Losch is relied upon to show that phospholipids are easily formulated into a granulated state. It would have been obvious to formulate the phospholipid composition of Strauss into the granulated for of Losch in order to provide for a storage stable phospholipid composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/